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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re SEBASTIAN G. et al., Persons
Coming Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.H. et al.,

Defendants and Appellants,

YVONNE G.,
Respondent.

D056360

(Super. Ct. No. J516862A-B)

APPEAL from orders of the Superior Court of San Diego County, Carol Isackson,
Judge. Affirmed in part; dismissed in part.

T.H. and Edward H. appeal findings and orders terminating their parental rights
under Welfare and Institutions Code¹ section 366.26. T.H. also appeals an order
summarily denying her petition for modification under section 388. Edward raises no

¹ Further statutory references are to the Welfare and Institutions Code.

issues but asks this court to exercise its discretion to review the record. We dismiss Edward's appeal. With respect to T.H.'s appeal, we affirm.

EDWARD'S REQUEST

Citing *In re Sade C.* (1996) 13 Cal.4th 952, Edward asks this court to exercise its discretion to review the record for error. In *In re Sade C.*, the California Supreme Court held that review pursuant to *People v. Wende* (1979) 25 Cal.3d 436 is unavailable in "an indigent parent's appeal from a judgment or order, obtained by the state, adversely affecting his custody of a child or his status as the child's parent." (*In re Sade C.*, *supra*, at p. 959.) We therefore deny appellant's requests to review the record for error and to address the *Anders* issues. (*Anders v. California* (1967) 386 U.S. 738.)

Citing *In re Phoenix H.* (2009) 47 Cal.4th 835, Edward's counsel also asks this court to exercise its discretion to provide his client the opportunity to file a supplemental brief in propria persona. The request is denied.

FACTUAL AND PROCEDURAL BACKGROUND

Sebastian's mother is T.H. The identity of Sebastian's biological father is unknown. In November 2007 the trial court found that T.H. had failed to protect Sebastian, then age two and one-half, from serious physical harm. (§ 300, subd. (b).) Sebastian had multiple bruises on his head, face and ear, consistent with intentional injury. He also had bruising to his anus. T.H. insisted Sebastian fell on a metal grate in the street and when he was set on his feet, immediately fell again. A perpetrator was not identified; however Sebastian appeared to be afraid of T.H.'s boyfriend, Edward H. The

court issued an order prohibiting Edward from having contact with Sebastian. T.H. married Edward two days later.²

Before T.H. met Edward, she and Sebastian lived with Sebastian's grandmother and his aunt Yvonne G. When T.H. moved in with Edward, she left Sebastian in their care for several months and visited her son on weekends. After arguing with her mother about Sebastian's care, T.H. kept Sebastian with her. Sebastian had been living with T.H. and Edward for approximately two months before he was removed from her care.

Approximately one month before Sebastian's removal, Yvonne noticed bruising in his ear, and cuts under his eye and on his hand. He also had bruises on his knees. T.H. told her that Sebastian had fallen. Yvonne photographed Sebastian's injuries. On one occasion, Sebastian was happy when T.H. came to get him. When he saw Edward, Sebastian began to cry silently, tears rolling down his face.

Sebastian had significant speech delays. He was active to the San Diego Regional Center (Regional Center). He had been receiving services while he was living with Yvonne but T.H. had been unable to set up services for him.

At the December 2007 disposition hearing, the court placed Sebastian in Yvonne's care and granted her application for de facto parent status. Later, C.H. was also placed in Yvonne's care.

² T.H. and Edward have a child, C.H., who was born in August 2008 and detained at birth. Their parental rights to C.H. were also terminated in the same proceedings that gave rise to this appeal. T.H. makes no claim of error as to C.H., and therefore we mention him in this opinion only when relevant to the issues raised in this appeal.

In January 2009 T.H. stopped visiting Sebastian and participating in services to travel with Edward, who was a truck driver. In May 2009³ the court found that T.H. had made "none to minimal" progress with her case plan, terminated services and set a section 366.26 hearing.

The contested section 366.26 hearing was held on November 30, 2009. The social worker's report and addendums were entered in evidence. T.H. did not cross-examine the social worker or offer affirmative evidence.

The social worker reported Sebastian was doing well in Yvonne's care. He had overcome his early developmental and speech delays and was no longer eligible for Regional Center and other services.

Yvonne was willing to adopt Sebastian and C.H. She had been their primary caregiver for most of their lives. Sebastian and C.H. were bonded.

T.H. began missing visits with Sebastian toward the end of 2008. She did not visit Sebastian from January to May 2009, but continued to telephone Yvonne to ask about his well-being. In May T.H. saw Sebastian three times. The record suggests T.H. visited Sebastian in June. Nineteen visits were scheduled from July 26 to November 29. Of these, T.H. cancelled 10 visits, and one visit was cancelled because Sebastian was ill.

The social worker reported Sebastian continuously resided with T.H. from his birth to age two. Sebastian called T.H. "mommy." They interacted lovingly, and he had "some level" of attachment to her. However, during visits, T.H. did not intervene when

3 The six-month status review hearing was continued many times, and eventually merged with the 12-month and 18-month permanency review hearings.

Sebastian was engaged in inappropriate behaviors. He responded to Yvonne. T.H. had been unable to maintain a consistent parental role, and Sebastian did not depend on her to meet his needs. The social worker stated Sebastian would benefit more from a permanent plan of adoption than he would from maintaining his relationship with T.H.

The court found that Sebastian and C.H. were adoptable and terminated parental rights.

DISCUSSION

T.H. contends the court erred when it terminated parental rights to the children. She argues termination of parental rights would be detrimental to Sebastian because he had a beneficial relationship with her. (§ 366.26, subd. (c)(1)(B)(i).)

At a permanency plan hearing under section 366.26, the court may order one of three alternatives: adoption, guardianship, or long-term foster care. (*In re Taya C.* (1991) 2 Cal.App.4th 1, 7.) If the dependent child is adoptable, there is a strong preference for adoption over alternative permanency plans. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 888; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808-809.) If the court determines the child is likely to be adopted, the burden shifts to the parent to show termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345; but see § 366.26, subd. (c)(1)(A).)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." "Benefit from

continuing the relationship" means "the [parent-child] relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). It does not require proof the child has a "primary attachment" to a parent or that the parent maintained day-to-day contact with the child. (*In re S.B.* (2008) 164 Cal.App.4th 289, 300; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1538; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Where the parent has continued to regularly visit and contact the child, and the child has maintained or developed a significant, positive, emotional attachment to the parent, "the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H., supra*, 27 Cal.App.4th at p. 575.)

We determine whether there is substantial evidence to support the court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If there is substantial evidence supporting the court's ruling, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c). (*Autumn H., supra*, 27 Cal.App.4th at p. 576; *In re S.B., supra*, 164 Cal.App.4th at p. 298.)

At the section 366.26 hearing, the trial court found that T.H. did not maintain regular and consistent visitation with Sebastian, and her relationship with him did not constitute a parental relationship. There is substantial evidence in the record to support the court's findings.

From January to May 2009, T.H. did not visit Sebastian. She saw him approximately 14 times from May through November, and cancelled almost as many visits as she attended. The record shows that during visits, Sebastian accepted T.H. and was comfortable with her. However, T.H. did not redirect or assist Sebastian when he needed adult attention, and Yvonne often had to intervene. For example, on one occasion, Sebastian kicked another child during a game of karate. T.H. did not intervene. Yvonne explained to Sebastian that kicking might hurt the other child and he stopped the game. On another occasion, when Sebastian accidentally hit the social worker with a toy missile, T.H. excused his behavior. Yvonne intervened, and Sebastian complied with her request to stop. He began to play on the playground equipment and engaged Yvonne to play with him, despite T.H.'s presence. Sebastian did not react when T.H. left, and wiped her kiss off his cheek.

The social worker believed Sebastian was indifferent to T.H.'s presence and their relationship did not appear to be significant. Although the social worker believed T.H. genuinely loved her children, she did not see any indication T.H. could care for and protect them.

We conclude that there is substantial evidence in the record to support the findings T.H. did not regularly visit and contact Sebastian. Even if T.H. had met the first prong of

regular contact and visitation, the record supports the finding that T.H. did not develop or maintain a significant, beneficial parental relationship with Sebastian. Thus, whatever benefit Sebastian might gain by maintaining his relationship with T.H. is outweighed by the benefit he would gain by living in a permanent home with a stable, long-term caregiver. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

DISPOSITION

Edward's appeal is dismissed. With respect to T.H.'s appeal, the findings and orders are affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.